

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARY CASTEEL,

Plaintiff,

v.

CHARTER COMMUNICATIONS INC.,

Defendant.

CASE NO. C13-5520 RJB

ORDER DENYING MOTION FOR  
RECONSIDERATION

Defendant Charter Communications Inc. has moved for reconsideration of this Court's Order Denying Charter's Motion for Summary Judgment. Dkt. 39. The Court has considered the motion, response, reply and record herein.

Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. The term "manifest error" is "an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." *Black's Law Dictionary* 622 (9th ed. 2009).

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly

1 unusual circumstances, unless the district court is presented with newly discovered evidence,  
2 committed clear error, or if there is an intervening change in the controlling law." *Marlyn*  
3 *Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither  
4 the Local Civil Rules nor the Federal Rule of Civil Procedure, which allow for a motion for  
5 reconsideration, is intended to provide litigants with a second bite at the apple. A motion for  
6 reconsideration should not be used to ask a court to rethink what the court had already thought  
7 through—rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351  
8 (D. Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for  
9 reconsideration, and reconsideration may not be based on evidence and legal arguments that  
10 could have been presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT &*  
11 *T Co.*, 363 F.Supp.2d 1253, 1269 (D. Haw. 2005). "Whether or not to grant reconsideration is  
12 committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes & Bands*  
13 *of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

14 Much of Defendant's argument is mere re-argument of the summary judgment  
15 proceedings and not a basis for reconsideration. As the court pointed out in *Kimbrow V. Atlantic*  
16 *Richfield Co.*, 889 F.2d 869, 878-79 (9th Cir. 1998), the possibility that an inability to perform  
17 the essential functions of the job may arise in the future does not excuse an employer from  
18 providing a reasonable accommodation at the time of discharge that could have plausibly  
19 enabled the disabled employee to adequately perform her job. Here, there are disputed issues of  
20 fact as to whether Ms. Casteel could have performed the essential functions of the job given a  
21 reasonable accommodation as of the date of her termination, October 6, 2009, and whether an  
22 additional leave of absence was a reasonable accommodation as of October 6, 2009. The  
23 evidence that Ms. Casteel was unable to work, with or without accommodation, is for the jury to  
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1 weigh in its determination as to whether Casteel is a qualified individual. This evidence is also  
2 relevant as to the amount of damages, if any, that were suffered by Ms. Casteel.

3 Defendant has not persuaded this Court that it committed “manifest error.” Defendant has  
4 not made the requisite showing for reconsideration under CR 7(h)(1).

5 Accordingly, it is hereby **ORDERED**:

6 Defendant’s Motion for Reconsideration (Dkt. 40) is **DENIED**.

7 Dated this 1<sup>st</sup> day of December, 2014.

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10 ROBERT J. BRYAN  
11 United States District Judge  
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